

The Training School at Vineland, Inc. and Communications Workers of America, Local 1040, AFL-CIO, Petitioner. Cases 4-CA-17301 and 4-RC-17323

January 17, 1991

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

The National Labor Relations Board, by a three-member panel, has considered objections to an election held May 17, 1990, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 43 for and 29 against the Petitioner, with 2 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions¹ and briefs, has adopted the Regional Di-

¹On September 20, 1990, the Employer filed a motion to dismiss for lack of jurisdiction or, in the alternative, to remand to the Regional Director. On October 12, 1990, the Petitioner filed a brief in opposition to the Respondent's motion, and in a letter dated October 12, 1990, the Employer requested permission to reply to the Petitioner's brief. On November 6, 1990, the Employer filed a reply brief.

In its motion the Employer contends that under *Res-Care, Inc.*, 280 NLRB 670 (1986), the Board should decline to assert jurisdiction in the instant proceeding. We find no merit in the Employer's motion.

While a question concerning the Board's exercise of its statutory jurisdiction may be raised at any time, a question concerning the Board's exercise of its discretionary authority must be raised in a timely manner. See *Ryder Student Transportation*, 297 NLRB 371 (1989); *Anchortank*, 233 NLRB 295 fn. 1 (1977); *Gateway Motor Lodge*, 222 NLRB 851, 852 (1976); *Pollack Electric Co.*, 214 NLRB 970 (1974).

On March 2, 1990, the Petitioner filed its petition, seeking to represent the Employer's employees at its Millville and Vineland, New Jersey facilities. On

receptor's findings and recommendations, and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Communications Workers of America, Local 1040, AFL-CIO, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time technicians and instructors, including their substitutes, working at the Employer's training centers now located in Millville and Vineland, New Jersey, and at the Employer's group homes now located at Folsom, Buena Vista, Dorothy, Rosenhayn and Vineland, New Jersey, and excluding all professional employees, office clerical employees, confidential employees, guards and supervisors as defined in the Act and all other employees.

April 17, 1990, the Employer and the Petitioner entered into a Stipulated Election Agreement in which the parties stipulated that the Employer was engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. Pursuant to that agreement, a Board-conducted election was held on May 17, 1990, which the Petitioner won. On May 23, 1990, the Employer filed objections to the conduct of the election, and on July 20, 1990, the Regional Director issued a report recommending that the objections be overruled and the Petitioner certified. On August 3, 1990, the Employer filed exceptions to the Regional Director's report. At no time at any of these stages did the Employer raise the question of the Board's jurisdiction over it. Rather, the Employer raised the jurisdictional issue for the first time in its September 20, 1990 motion, approximately 7 weeks after it had filed its exceptions to the Regional Director's report and almost 6 months after it had stipulated to the Board's jurisdiction in the Stipulated Election Agreement.

Under these circumstances, we find the Employer's attempt to raise the discretionary jurisdictional issue untimely, and we accordingly deny the Employer's motion. See, e.g., *Pollack Electric Co.*, supra.